

BEFORE THE FAIR EMPLOYMENT AND HOUSING COMMISSION  
OF THE STATE OF CALIFORNIA

In the Matter of the Accusation  
of the

DEPARTMENT OF FAIR EMPLOYMENT  
AND HOUSING

v.

LARRY MIKOL FULKERSON, as an Individual  
and as Owner and Managing Agent of  
PROFESSIONAL APARTMENT  
MANAGEMENT, INC. and TAHOE PINES,

Respondent.

GINA HARTUNIAN, an Individual,

Complainant.

Case No.

H-200506 Q-0023-02-sh  
C 06-07-006

07-05-P

DECISION

The Fair Employment and Housing Commission hereby adopts the attached Proposed Decision as the Commission's final decision in this matter and designates it as precedential, pursuant to Government Code section 12935, subdivision (h), and California Code of Regulations, title 2, section 7435, subdivision (a).

Any party adversely affected by this decision may seek judicial review of the decision under Government Code sections 11523 and 12987.1, Code of Civil Procedure section 1094.5, and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers shall be served on the Department, the Commission, respondent, and complainant.

DATED: September 18, 2007

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GEORGE WOOLVERTON

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TAMIZA HOCKENHULL

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PATRICK ADAMS

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LINDA NG

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CAROL FREEMAN

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PROPOSED DECISION

Administrative Law Judge Caroline L. Hunt heard this matter on behalf of the Fair Employment and Housing Commission on October 23, 2006, in Oakland, California, and on March 20, 2007, in Placerville, California. Gregory Fisher, Staff Counsel, represented the Department of Fair Employment and Housing. Daphne Macklin, Staff Attorney, of Legal Services of Northern California, represented complainant-intervenor Gina Hartunian. Kelley S. Kern, Esq., of Cook Brown, LLP, attended the March 20, 2007 proceedings as an observer. Respondent Larry Fulkerson did not appear.

At the conclusion of the hearing on March 20, 2007, the record was left open for the submission of supplemental exhibits, received on May 8, 2007, when the matter was deemed submitted.

After consideration of the entire record, the administrative law judge makes the following findings of fact, determination of issues, and order.

## FINDINGS OF FACT

1. On July 25, 2005, Gina Hartunian (complainant, complainant-intervenor, or Hartunian) filed written, verified complaints with the Department of Fair Employment and Housing (DFEH) against Professional Apartment Management, Tahoe Pines, and Larry Fulkerson. The complaints alleged that, in the preceding year, complainant was sexually harassed because of her sex, female, by Larry Fulkerson, manager of her apartment building, thereby creating a hostile and offensive living environment, in violation of Government Code section 12955, subdivision (a), of the Fair Employment and Housing Act (the Act or FEHA).

2. The DFEH is an administrative agency empowered to issue accusations under Government Code section 12930, subdivision (h). On July 24, 2006, Suzanne M. Ambrose, in her official capacity at that time as Director of the DFEH, issued an accusation against Tahoe Pines, a business entity of unknown form, Professional Apartment Management, Inc., a California Corporation, and Larry Fulkerson, as an Individual, Owner and Managing Agent of Professional Apartment Management, Inc., and Tahoe Pines.

3. The DFEH's accusation alleged that from July to September 2004, respondent Fulkerson (respondent or Fulkerson), resident manager of Tahoe Pines apartments, sexually harassed complainant with repeated unwelcome sexual advances, creating a hostile housing environment, in violation of Government Code section 12955, subdivisions (a) and (d). The DFEH further alleged that the entities Professional Apartment Management, Inc. and Tahoe Pines were liable as owners under Government Code sections 12927, subdivisions (e) and (f), and 12955, subdivisions (a), and (d).

4. On August 8, 2006, Professional Apartment Management, Inc., by its attorney Ronald W. Brown, Esq., of Cook Brown LLP, gave written notice of its election to transfer the proceedings to court, in lieu of an administrative proceeding before the Commission, pursuant to Government Code section 12989, subdivision (b). Accordingly, on August 29, 2006, the DFEH withdrew its accusation against Professional Apartment Management, Inc., and Tahoe Pines and filed a complaint in the Superior Court of the State of California, County of El Dorado, entitled DFEH v. Professional Apartment Management, Inc., and Does One through Thirty, case number SC20060166. At the time of the administrative hearing in this case, the civil case was still pending in the El Dorado Superior Court.

5. On October 19, 2006, the DFEH filed an amended accusation with the Commission, deleting Professional Apartment Management, Inc. and Tahoe Pines as parties to the administrative action, making a minor amendment to the prayer, and otherwise re-alleging the same violations against respondent Fulkerson as set out in the original accusation.

6. At all times relevant, Tahoe Pines Apartments was a complex of five apartment buildings, located at 3431 Spruce Avenue, South Lake Tahoe, California. Tahoe Pines was a

“housing accommodation,” pursuant to Government Code section 12927, subdivision (d), providing low income housing to tenants eligible for federal housing subsidies, including Section 8 Housing Assistance administered by the federal Department of Housing and Urban Development (HUD).

7. In 2001, complainant became a tenant at Tahoe Pines Apartments. Initially, complainant lived there with her husband Jason and seven year-old daughter Savannah. In August 2001, complainant’s second daughter Daniella (or Ella) was born. Around that time, complainant and her husband separated, and he and Savannah moved to Southern California.

8. In May 2004, respondent Fulkerson, aged 52, began working for Professional Apartment Management, Inc. (PAM) as a Rental Manager Trainee.

9. Effective June 1, 2004, PAM assigned Fulkerson to the position of Resident Rental and Maintenance Manager at Tahoe Pines Apartments. His written contract of employment required Fulkerson to reside on-site, in an apartment provided by PAM. His duties included managing the marketing and rental of the apartments, collecting the rent, and maintenance and upkeep of the buildings and grounds.

10. In early June 2004, Fulkerson moved into an apartment at Tahoe Pines Apartments, introduced himself to the tenants, including complainant, and assumed his duties as resident manager at the apartment complex.

11. On the weekend of July 4, 2004, complainant and her family celebrated the Fourth of July holiday with a barbeque at Tahoe Pines Apartments. Complainant’s daughter Savannah then nine years old, was staying with complainant for the summer. Complainant’s other daughter, Ella, was nearly three years old at the time. Complainant’s mother, Judy Lynn Hope, and her sister, brother-in-law and nephews, the Horns, visited for the Fourth of July weekend. At some point, Fulkerson joined the family gathering. He accompanied complainant’s mother to Costco, bringing back food for the barbeque, and later went with the family and their neighbors to watch the fireworks. Hope and the Horns left to return to Oregon the next day.

12. On about July 10, 2004, Fulkerson persuaded complainant to let him drive her and her daughters to Sweet Home, Oregon, to visit complainant’s mother, Judy Lynn Hope. Fulkerson convinced complainant that her car was not mechanically safe enough to make the trip. He also told complainant that he wanted to spend time with Hope, describing conversation with her as “delightful.” Complainant believed Fulkerson wanted to pursue a possible relationship with her mother. After checking with Hope, who thought that Fulkerson seemed to be a gentleman, complainant agreed to let him come along on the trip.

13. During the visit to Oregon, Fulkerson was unfailingly polite, spending a lot of time with Judy Lynn Hope, while complainant “hung out” with her siblings and daughters. Hope permitted Fulkerson to occupy a guest room over the garage at her home. At one point they all drove to the beach, and later dined at a restaurant, with Hope and Fulkerson sitting

together, talking and drinking wine. Throughout the visit, Fulkerson's attention was focused on complainant's mother.

14. During the drive home to Tahoe from Oregon two days later, Fulkerson told complainant that her husband was not good enough for her, that she deserved better, and needed a man to take care of her. Complainant informed Fulkerson that "it wasn't going to happen." She told him that she was very independent and that she did not date. She also told him that she loved her husband, and always would.

15. Sometime in mid-July 2004, a friend of complainant, Jamie Dring, visited her from England. Although Dring was traveling with his girlfriend, Fulkerson questioned him about his relationship with complainant. Complainant told Fulkerson that it was none of his business and that he should not question her friends. She thought that Fulkerson was acting as if he were jealous. She thought his behavior was odd and that he was "nosey" and "overzealous."

16. During the week of July 13, 2004, on different occasions when complainant returned to her apartment, she discovered cards with handwritten notes addressed to her from Fulkerson. He left a number of cards inside her bedroom, together with some slippers and a robe. On several occasions, she discovered that items of food had been placed in her freezer. She returned the robe and slippers to Fulkerson, telling him she did not want gifts from him. Because she was a vegetarian, she gave away the perishable meats that had been placed in the freezer. This angered Fulkerson, who told her that it was disrespectful and an insult to him to give the food away.

17. To support herself and her daughter, complainant worked four days a week in a shop at Zephyr Cove, earning about \$400 a month. She also worked at the local flea market on weekends, earning on average from \$100 up to \$400 a month during the summer. She reported all of her earnings, and received adjustments to the assistance she received based on what she earned.

18. On a weekend in mid-July 2004, Fulkerson went to the local flea market. He claimed it was his birthday and that complainant should buy him a gift. She demurred. That same weekend at the flea market, complainant talked to Brian, a wood carver and artist she had known in Southern California. He showed complainant pictures of his latest carvings while his girlfriend walked around the market. When Fulkerson noticed Brian and complainant sitting together, he got angry and upset. Later that day at the flea market, a number of complainant's friends told complainant that Fulkerson was "strange," and that he claimed that he was a "good daddy figure" and was going to take care of complainant and Ella. This disturbed complainant, as she had given no cause to Fulkerson to imagine that there was either a current or future relationship between them.

19. That evening, a group of flea market vendors, complainant included, went to a \$10 all-you-can-eat buffet dinner. Complainant invited a friend, Dana, and her son. Fulkerson had dressed up for the dinner, going home first to shower, and put on his red cowboy boots


and Wrangler jeans with a big belt buckle. When he realized complainant was dining with her girlfriend, he got angry, and went outside and sat in his car. Complainant went to talk to him, telling him that she was not interested in dating him, that it was not because of his age, but they had nothing in common and she did not want a boyfriend. She then asked if he would like to come back into the restaurant and join the group, but he stayed sitting in his car.

20. At some point during the summer, complainant went to a reggae concert with friends. Fulkerson followed complainant there, watching whom she talked to and where she went. Complainant spotted Fulkerson in the crowd and felt that it was “creepy” that he was following her.


21. On about July 17, 2004, Fulkerson offered to give complainant’s daughter Savannah some money, telling her that she was beautiful and that “when [she] turn[s] 18, [she is] legally [Fulkerson’s].” He also told the child that she would be “as sexy as [her] mother.” Savannah told complainant what Fulkerson had said. Complainant angrily confronted Fulkerson, telling him that his comments were “uncalled for” and “wrong.” He told complainant that he was simply giving “the mother a compliment.”

22. Complainant was so disturbed by Fulkerson’s conduct that she decided that Savannah should not remain with her at Tahoe Pines Apartments while Fulkerson was there. She felt concerned for both of her daughters, believing Fulkerson to be obsessed with them. She called her mother, who drove from Oregon to pick up complainant, Savannah and Ella, and take them to Southern California to return Savannah to her father.

23. Toward the end of July 2004, while complainant was in Southern California, Fulkerson called complainant repeatedly on her cellular phone. She asked him how he had obtained the number, then yelled at him that he was being obsessive and to stop calling her.

24. On about August 10, 2004, complainant, Hope and Ella returned to Lake Tahoe. Her neighbor, Julie Jacobs, informed complainant that she had seen Fulkerson going in and out of complainant’s apartment while she was away. When complainant entered her apartment, she saw that items had been placed inside, including a television/VCR, a “porn” tape, items of lingerie, a bracelet, and some bottles of oils and lotion. Complainant also discovered a book, entitled, “269 Amazing Sex Tips and Tricks for Women.” On the inside cover of the book was written, “For beautiful Gina - From a hopeful man who loves you very much.  Mikol.”

25. Another card Fulkerson had left in complainant’s apartment read,

I’ve been feeling pretty “Blue” not being able to talk with you this past week while you’ve been in L.A...I hope you like the stuff I bought for you and Ella Rose...I am looking forward to a passionate kiss and tasting your lips and tongue....Said Mikol 

26. Complainant discovered another letter from Fulkerson on her apartment window sill. In the handwritten letter dated August 10, 2004, Fulkerson wrote, *inter alia*,

...You said you didn't want a boyfriend but anything less will not work for me...you might be surprised how understanding and non-jealous I can be when content in the knowledge that you want to be with me...intimacy doesn't just mean fucking and sucking...I want you and I want your children in my life Gina and not as a friend...just hanging out and not having you would bring me more pain than I care to deal with...Don't make me walk away...Come be my sweetheart Gina...

In the letter, Fulkerson also accused complainant of flirting with 20 year-old "boys" who wanted to have sex with attractive experienced 36 year-old women, "especially if they look like [her]".

27. That same day, complainant realized that items had been taken from her apartment. Missing from a dresser drawer in her bedroom was an envelope that complainant had taped there, containing love letters, intimate photographs of her and her husband, and court documents concerning Savannah. Their social security cards and vehicle "pink slips" were also gone. Telephone numbers posted on the refrigerator were missing. Her telephone had been replaced and the messages on her answer machine erased.

28. Complainant felt invaded and nervous. She was thankful that her mother was with her because she felt too uncomfortable to stay in the apartment alone. She and her mother discussed what they should do, deciding to return the items left in the apartment to Fulkerson, telling him one last time that complainant wanted nothing to do with him.

29. Complainant met with Fulkerson to return the items left in her apartment. She told him that it would be best if he would quit as manager and leave the apartment complex before she had no choice but to call the property management company, PAM. Fulkerson became irate, grabbing complainant by both arms, telling her that she "needed to wake up and see [her]self in a better future with [him]." He told her that she was naïve and had made bad choices in her life. He criticized her being on HUD assistance, threatening that he could report her or otherwise harm her if she did not make the "right choice to let [him] be [her] man." Then he pulled complainant toward him and tried to kiss her.

30. Complainant "freaked out" but managed to get away from Fulkerson. She and her mother decided that complainant had to get away. As they left, they found a card containing cash in Hope's car. Hope took the card and its contents and slid them under Fulkerson's door.

31. On or about August 17, 2004, without complainant's knowledge, Fulkerson added the name "Gina Fulkerson" to his AAA membership, and tried to register complainant's car in his name.

32. Between mid-July and late August 2004, Fulkerson left more than 22 cards and love notes in complainant's apartment. One such card, addressed to complainant and both of her daughters, said,

I miss you and long to inhale your fragrances and kiss your skin. You probably don't know this but I hold you tight every night and am kissing you tenderly every night as I drift off to sleep.

33. On about August 18, 2004, complainant, her mother and Ella returned to the apartment to collect some things. In Ella's bedroom they discovered a birthday card from Fulkerson to the three year old, as well as a card addressed to complainant with a picture of a little boy holding and kissing a little girl, where Fulkerson wrote,

I am very anxious to have you back in my arms and have all this worked out...Kisses from Mikol...Happy birthday to Ella Rose. I love my Hartunian girls.

34. Complainant asked a friend to change the locks to her apartment, but was told that the landlord had to authorize it. She realized that it was impossible for her to stay in her apartment while Fulkerson was still there. She and Ella immediately left to go to her mother's, in Sweet Home, Oregon.

35. Between August 23 and September 2, 2004, without complainant's consent, Fulkerson deposited money into her bank account, in sums varying from \$88 to \$300. Fulkerson hoped that complainant would use the money to buy a ticket to come back to him. Complainant neither asked for nor wanted the money, and was disturbed that he apparently had access to her bank account and that the unwanted deposits could jeopardize her financial standing with her housing subsidy.

36. In about mid-September 2004, while complainant and Ella were still staying at Hope's house in Sweet Home, Oregon, Fulkerson tried to have flowers delivered to complainant, who refused to accept them. Within a few days, at 10:00 at night, Fulkerson telephoned, saying that he was in Klamath Falls, about three hours away. Complainant told him, "I don't know why you're in Klamath Falls, but don't come here. You're not invited...You have no right...."

37. The next morning, complainant and her brother went to the local Oregon police department to report Fulkerson. By this point, complainant realized that Fulkerson was going to persist in pursuing her, no matter how many times she told him "No." But the police explained that it was not within their jurisdiction, and suggested that she follow up with the Tahoe authorities. The police also told complainant to "keep [her] cool" and be friendly with him until he returned to Lake Tahoe. Complainant also telephoned the South Lake Tahoe Women's Center, who asked her to come in for help preparing an application for a restraining order on her return.



38. Complainant telephoned her mother, who informed her that Fulkerson had arrived with a bunch of flowers and champagne, and that she was keeping him busy with chores. Complainant stayed away until late that night, and went directly to her mother's room without greeting Fulkerson, staying there the rest of the night. She later saw him out on the patio, watching what she thought was a "porn" movie on his laptop computer.

39. The next day, as complainant got in her car to leave, Fulkerson confronted her, asking why she was avoiding him. Complainant felt both threatened and angry. She had torn the flowers he had brought, picking off petals saying, "No, I don't like you. No I can't stand you." She told Fulkerson that he was "creeping [her] out." She said that he was "stalking, obsessive and crazy," and that he scared her with his "huge hands" and his threats. She picked up a bottle of champagne, shattering it in the driveway. Fulkerson became very angry, grabbing complainant, his hands at her throat. Her nephew then shouted from the window of the house, and Fulkerson backed away.

40. Complainant, Hope and Ella left that afternoon in Hope's car to drive back to Lake Tahoe. Fulkerson drove his own car. Seeing Fulkerson's erratic driving, complainant and Hope were concerned that he had been drinking. At some point Fulkerson stopped his car, saying he was unwell—he had previously mentioned having several prior heart attacks. Complainant reluctantly agreed to drive his car. When complainant began driving, Fulkerson grabbed her knee and pinched her leg. He became verbally abusive, telling her to stop teasing him, to stop "playing" with him. He grabbed her leg and pushed it onto the gas pedal. Complainant became frightened. She stopped the car abruptly by using her left foot to hit the brake, jumped out, and ran back to her mother's car. They did not see Fulkerson again that day.

41. When they entered complainant's apartment at Tahoe Pines Apartments, complainant and Hope discovered a letter from Fulkerson, in which he launched into a six page narrative attack on complainant, calling her a "sperm receptacle," a "female sexual deviant," a "real human slug," and accusing her of being with "niggers," and "fucking little boys." In a change of tone, Fulkerson wrote, "If you like sex so much...come get me...you'll have the best sex of your life with an experienced partner who is clean and caring...." He also wrote, "[C]ome be my sweetheart and the last love of my life...the greatest love of my life." He signed the letter "MIKOL LOVES GINA and DANIELA ROSE (The Hartunian Beauties)."

42. The next day, September 21, 2004, complainant contacted the El Dorado Section 8 Agency, the property management company, PAM, and the South Lake Tahoe Police Department, to try and get help in dealing with Fulkerson. Accompanied by her mother, complainant also went to the South Lake Tahoe Women's Center.

43. That same day, September 21, 2004, at about 5:00 p.m., Hope confronted Fulkerson about his treatment of her daughter, and his "disrespect" for her. She told him to leave complainant alone, that "no means no." Fulkerson told Hope to go away, that she was harassing him.

44. In a letter dated that same day, September 21, 2004, Fulkerson wrote to Aaron Richards, Management Services Coordinator at PAM. Fulkerson wrote that Hope had accused him of sexually harassing her daughter, and that, "I will assure you that any accusations she makes are complete bullshit and not only will I provide a vigorous defense, I will fill a hearing room or courtroom with witnesses to support my defense and prove complainant to be a lying and conniving person...."

45. In a letter dated the next day, September 22, 2004, complainant's mother wrote to PAM, detailing Fulkerson's pursuit of complainant, including his "consistently dirty sexual remarks" and innuendos, and that complainant was "afraid to be home alone with him lurking about. Hope attached two of Fulkerson's letters to complainant.

46. On September 23, 2004, PAM terminated Fulkerson's employment as Resident Manager. However, Fulkerson refused to move out of Tahoe Pines Apartments, staying in his apartment until some time in November 2004.

47. Complainant was not willing to risk being in her apartment while Fulkerson was still there. She took up a friend's offer for a place to stay in Costa Rica, and flew there with her younger daughter.

48. In early December 2004, complainant learned that Fulkerson had finally moved out of Tahoe Pines Apartments, and she returned home with Ella. Savannah joined them, coming to stay for the holidays. But complainant still did not feel safe in her apartment alone with her daughters. She felt "frantic" to find another apartment. Over Christmas, they stayed with friends in Southern California.

49. Complainant remained emotionally wary and frightened for many months. She found it eerie that Fulkerson had created a fantasy life with her and her daughters as its focus. She thought Fulkerson scary and intimidating, both physically and verbally. She found his attention to her very upsetting. She felt "creeped out" and "freaked" that he had followed her and mentally obsessed about her. She was frightened that he had taken her personal photographs, legal documents, and telephone numbers for her friends and family.

50. On her return to California, complainant began seeing a mental health counselor at least once a week. She continued to feel frightened of Fulkerson, and particularly fearful that he could try to abduct her daughters. Complainant notified her daughters' teachers about Fulkerson.

51. With help from the South Lake Tahoe Women's Center, complainant filed for and obtained a restraining order against Fulkerson. He subsequently filed a small claims action against her, and sought his own restraining order. (Superior Court of California, County of El Dorado, SC20040188.) In his application, Fulkerson sought return of the items, such as the TV/VCR that he had left in complainant's apartment, as well as the money he had deposited in her bank account. The matter was ultimately determined on May 12, 2005, by

52. At the date of hearing, complainant continued to live at Tahoe Pines Apartments. She continued to believe that Fulkerson posed a threat to her and her daughters. Her fear remained that wherever she went, Fulkerson could track her down, as he had taken her personal information, including her and her daughters' social security numbers. She still underwent regular counseling, seeing therapist Judith Greco once a week.

### Procedural Facts

53. On July 27, 2005, shortly after the filing of the complaint in this case, the DFEH served Fulkerson with a written notification that he was required to keep the DFEH apprised of his current address and telephone number. (Cal. Code Regs., tit. 2, § 7411.)

54. On July 25, 2006, the DFEH served Fulkerson with the accusation and the "accusation package" and related papers. Respondent signed the certified mail "green card," thereby acknowledging receipt of the DFEH's accusation and related papers.

55. On September 3, 2006, Fulkerson wrote a letter to DFEH, with a copy to the Commission, indicating that he intended to travel and place his mail on "vacation hold" for 30 days, and that he would be without a permanent home or mailing address. The envelope from Fulkerson bore the return address of "Fulkerson, P.O. Box 1512, Newark, CA, 94560."

56. On September 11, 2006, the DFEH served Fulkerson with a Notice of Hearing by mailing it to him at P.O. Box 1512, Newark, California, 94560. The Notice of Hearing noticed an administrative hearing in this matter to commence on October 23, 2006, at "a location to be announced." On October 10, 2006, the DFEH issued an Amended Notice of Hearing, noticing the administrative hearing on October 23, 2006, at 1515 Clay Street, Suite 701, Oakland, California. That same date, the DFEH mailed the Amended Notice of Hearing to respondent at P.O. Box 1512, Newark, California, 94560.

57. On October 2, 2006, the Commission issued an Order setting an October 11, 2006 telephone status conference, and served all parties, including Fulkerson at his P.O. Box 1512, Newark address. At the status conference held on October 11, 2006, Fulkerson did not appear. His telephone number was no longer a "working number."

58. On October 13, 2006, complainant, by her attorney, Daphne Macklin, Staff Attorney, Legal Services of California, sought leave to intervene in this administrative proceeding. On October 15, 2005, pursuant to California Code of Regulations, title 2, section 7425, subdivision (a), complainant's motion for intervention was granted.

59. The hearing was convened on October 23, 2006, in Oakland, California, for jurisdictional purposes. Fulkerson did not appear. The DFEH submitted its pleading file containing proofs of service to establish that Fulkerson had been served with the accusation

60. On October 19, 2006, the DFEH filed and served the amended accusation on the parties, including Fulkerson at his P.O. Box 1512, Newark address. Fulkerson did not sign the “green card” receipt.

61. On October 24, 2006, the Commission issued an Order setting, *inter alia*, a status conference to be held by telephone on November 8, 2006. The Order specified in bold letters that, “A PARTY’S FAILURE TO COMPLY WITH COMMISSION ORDERS AND PARTICIPATE IN COMMISSION PROCEEDINGS MAY RESULT IN AN ADVERSE ORDER AGAINST THAT PARTY, INCLUDING CONTEMPT PROCEEDINGS.” The Commission served all parties, including Fulkerson at his P.O. Box 1512, Newark address.

62. On November 8, 2006, the undersigned administrative law judge convened the status conference. Fulkerson did not appear.

63. On January 2, 2007, the DFEH issued an Amended Notice of Hearing, noticing administrative proceedings in this case to take place on March 20 to 21, 2007, at 330 Fair Lane, Placerville, California. The DFEH served Fulkerson on January 9, 2007, by mailing a copy of the Notice of Hearing to his P.O. Box 1512, Newark address.

64. On January 30, 2007, Staff Counsel for the DFEH attempted to contact Fulkerson by email at “mikolf@sbcglobal.net” but he did not reply.

65. On February 4, 2007, the Commission issued an Order setting a Pre-Hearing Conference to be held by telephone on March 13, 2007. Fulkerson was served at the P.O. Box 1512, Newark address. On March 13, 2007, Fulkerson failed to appear for the Pre-Hearing Conference.

66. None of the Orders that the Commission served on Fulkerson at his post office box in Newark, California was returned unclaimed.

67. The evidentiary hearing took place in Placerville on March 20, 2007. Fulkerson did not appear.

## DETERMINATION OF ISSUES

### Default Proceeding

The Commission has authority to proceed in a default case and may issue an order adverse to a respondent who does not appear at hearing to contest the DFEH’s charges,

providing that the DFEH establishes that it has effected proper service over respondent. (Cal. Code Regs., tit. 2, §§ 7407, subd. (e), and 7430, subd. (b), *Dept. Fair Empl. & Hous. v. Capital Hills Arco* (June 12, 2006) No. 06-03-P, 2006 WL 2239656 at \*8 (Cal.F.E.H.C.)); *Dept. Fair Empl. & Hous. v. Jarvis* (Jan. 18, 2001) No. 01-02-P, FEHC Precedential Decs. 2001, CEB 1, 6-7 [2001 WL 273486 at \* 6 (Cal.F.E.H.C.).]

In this case, the DFEH has shown that it established jurisdiction over Fulkerson by serving him on July 26, 2006 with a copy of the accusation, accusation package and related documents, receipt of which he acknowledged by his signature on the “green card.” The DFEH also established service of the Notices of Hearing to the P.O. Box 1512, Newark address, the last address provided by Fulkerson. The evidence established that Fulkerson had been notified of his legal obligation to update his address and telephone number with the DFEH. (Cal. Code Regs., tit. 2, § 7411.) Moreover, the Commission convened a number of status conferences prior to the evidentiary hearing in this case. Although Fulkerson was served with the Orders noticing the status conferences, he failed to participate in any of them.

Finally, the DFEH served Notice of Hearing noticing the administrative proceedings in Placerville to commence on March 20, 2007, on Fulkerson sufficiently in advance of the hearing date to constitute timely notice of the hearing. (Cal. Code Regs., tit. 2, § 7414, subd. (b).)

Accordingly, the DFEH established that it effected proper service on Fulkerson and the Commission has jurisdiction to decide this case as a default proceeding. The Commission may base its decision upon the respondent’s express admissions or upon other evidence introduced at hearing by the DFEH. (Cal. Code Regs., tit. 2, § 7430, subd. (a).) On a finding of liability on the evidence submitted, the Commission is authorized to issue an order adverse to respondent. (Cal. Code Regs., tit. 2, §§ 7407, subd. (e), and 7430, subd. (b); *Dept. Fair Empl. & Hous. v. Capital Hills Arco*, *supra*, 2006 WL 2239656 at \* 8; *Dept. Fair Empl. & Hous. v. Jarvis*, *supra*, 2001 CEB at pp. 6-7.)

## Liability

### A. Sexual Harassment

The DFEH alleges that complainant was subjected to unlawful sexual harassment by respondent Fulkerson, resulting in unlawful housing practices in violation of Government Code section 12955, subdivisions (a) and (d).

Sexual harassment is unwelcome sexual conduct, or other hostile or unwelcome conduct linked to the complainant’s sex, which deprives the complainant of a housing benefit, including the right to live in a discrimination-free housing environment. Deprivation of a discrimination-free housing environment is established if the unwelcome conduct alters the terms, conditions, privileges, facilities or services in connection with a complainant’s housing accommodation so as to create a hostile, unsafe, or offensive housing environment or otherwise interferes with the quiet enjoyment of the complainant’s housing environment.

(Gov. Code, §§ 12927, subd. (c), and 12955, subd. (a); *Dept. Fair Empl. & Hous. v. River Meadow Trailer Park* (Oct. 7, 1998) No. 98-15, FEHC Precedential Decs. 1998-1999, CEB 3, p. 13 [*River Meadow*]; *Beliveau v. Caras* (C.D.Cal. 1995) 873 F.Supp. 1393, 1398.) Sexual harassment in housing is a form of unlawful sexual discrimination under Government Code section 12955. (*Brown v. Smith* (1997) 55 Cal.App.4th 767, 781-2; *River Meadow, supra*, 1998-1999, CEB 3, at p. 14.)

## B. Whether Unwelcome Sexual Conduct Occurred

The DFEH asserts that respondent Fulkerson subjected complainant to repeated sexual harassment by his unwelcome sexual advances, his predatory sexual obsession with complainant, his lewd and vulgar writings, and his pornographic unsolicited gifts. This behavior, if it occurred, constitutes the kind of hostile sexual conduct that may form the basis for a sexual harassment violation under the Act. (*River Meadow, supra*, 1998-1999, CEB 3, at p. 14.)

Complainant convincingly and credibly testified to the conduct by Fulkerson described in the findings of fact. Fulkerson's "love" letters and cards introduced into evidence, established Fulkerson as an obsessive, controlling and frightening individual, who was threatening if thwarted.

This decision therefore finds that respondent Fulkerson engaged in the unwanted sexual conduct to which complainant testified, as described in the findings of fact.

## C. Deprivation of a Discrimination-Free Housing Environment

Unwelcome sexual conduct deprives an individual of a discrimination-free housing environment when the conduct is sufficiently severe or sufficiently pervasive to alter the terms, conditions, privileges, facilities or services so as to create an intimidating, oppressive, hostile, unsafe, abusive or offensive housing environment or otherwise interfere with the quiet enjoyment of the housing environment. (*Brown v. Smith, supra*, 55 Cal.App.4th at p. 84; cf. *Beliveau v. Caras, supra*, 873 F.Supp. at p. 1398.) The objective severity of the harassment is judged from the perspective of a reasonable person in the complainant's position, considering all the circumstances. (*Oncale v. Sundowner Offshore Services, Inc.* (1998) 523 U.S. 75, 81.) The trier of fact's inquiry is guided by "[c]ommon sense, and an appropriate sensitivity to social context." (*Ibid.*) As the Commission has previously noted, sexual harassment against a woman in the context of her home can be seen as particularly oppressive:

When sexual harassment occurs at work, at that moment or at the end of the work day, the woman may remove herself from the offensive environment. She will choose whether to resign from her position based on economic and personal considerations. In contrast, when the harassment occurs in a woman's home, it is a complete invasion of her life. Ideally,

home is the haven from the troubles of the day. When home is not a safe place, a woman may feel distressed and, often, immobile. (*River Meadow, supra*, 1998-1999, 1998 CEB 3, at p. 17, quoting *Comment, Home is No Haven: An Analysis of Sexual Harassment in Housing* (1987) 1987 Wis.L.Rev. 1061, 1073.)<sup>1</sup>

The DFEH proved that respondent Fulkerson's conduct was sufficiently pervasive so as to alter complainant's living conditions by creating an oppressive, hostile and offensive living environment and to interfere with complainant's quiet enjoyment of her housing environment. Fulkerson made repeated sexual advances to complainant, without her encouragement, and notwithstanding her express rejections of his attentions.

Fulkerson's conduct was also severe. He invaded the personal space of complainant's apartment to leave pornography, lingerie, and suggestive sexual notes, grabbed her and tried to kiss her, and tried to choke her when she rejected him in Oregon. This conduct caused complainant to feel so frightened that she was forced to abandon her home and file for a restraining order.

In sum, the DFEH and complainant-intervenor proved that respondent Fulkerson subjected complainant to unwelcome sexual conduct which was severe and pervasive. This conduct rendered complainant's housing environment hostile, abusive and offensive, and deprived her of a discrimination-free environment. Therefore, the DFEH has established a violation of Government Code section 12955, subdivision (a).<sup>2</sup>

### Remedy

Having established that respondent Fulkerson sexually harassed complainant in violation of the Act, the DFEH and complainant-intervenor are entitled to whatever forms of relief are necessary to make complainant whole for any loss or injury she suffered as a result. The DFEH must demonstrate, where necessary, the nature and extent of the resultant injury, and respondent must demonstrate any bar or excuse it asserts to any part of these remedies. (Gov. Code § 12970, subd. (a); Cal Code Regs., tit. 2, § 7286.9; *Donald Schriver, Inc. v. Fair Empl. & Hous. Com.* (1986) 220 Cal.App.3d 396, 407; *Dept. Fair Empl. & Hous. v. Madera County Bd. of Supervisors* (Sep. 7, 1983) No. 83-22, FEHC Precedential Decs. 1982-83, CEB 20, pp. 33-34 [1983 WL 36471 (Cal. F.E.H.C.)].)

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<sup>1</sup> As also noted by the Commission, "The resident manager of a housing accommodation holds power over a tenant, much like the power a manager or supervisor holds over a subordinate employee." (*River Meadow, supra*, 1998-1999, 1998 CEB 3, at p. 17.)

<sup>2</sup> The DFEH also charges that respondent violated Government Code section 12955, subdivision (d), applicable to "persons subject to the provisions of [s]ection 51 of the Civil Code" [the Unruh Act]. Having found respondent liable for violating the Act by sexually harassing complainant (Gov. Code, § 12955, subd. (a)), this decision does not reach whether Fulkerson may also be liable as a "business establishment."

The DFEH seeks out-of-pocket damages, emotional distress damages, a civil penalty and affirmative relief.

A. Make-Whole Relief

1. Out of Pocket Damages

The DFEH and complainant-intervenor seek an award of the lost earnings that complainant suffered because she was effectively prevented from working at the flea market in the lucrative summer months and thereafter while she fled with her daughter to get away from Fulkerson's unwanted attentions.

The evidence showed that complainant's earnings at the flea market averaged between \$100 and \$400 a month, with higher earnings in the summer months of July and August. This decision finds that complainant is entitled to an averaged amount of four months lost work from August to November 2004, at \$200 per month, for the sum of \$800.00. This amount will be awarded to complainant, plus interest thereon from the effective date of the decision, compounded annually, until paid.

2. Compensatory Damages for Emotional Distress

The Commission has the authority to award complainant her actual damages for emotional distress caused by respondent's violation of the FEHA. (Gov. Code, § 12987, subd. (a)(4); *Konig v. Fair Empl. & Hous. Com.* (2000) 28 Cal.4th 743, 758.)

At hearing, complainant credibly and convincingly testified that Fulkerson's relentless pursuit of her, after she told him unequivocally and repeatedly that she was not interested in a romantic or sexual relationship with him, caused complainant such upset and emotional distress that she was forced to leave her home to protect both herself and her young daughters. Fulkerson's obsessive attentions toward her, expressed though his barrage of "romantic" cards and love letters and the "gifts" that he placed in her apartment while she was absent, were unsettling and "creepy" to complainant. His attentions to her daughters—calling himself "Daddy Mikol" to three-year-old Ella, and telling nine-year-old Savannah that she was "sexy" and would legally be his once she turned 18, upset complainant so much that she fled with her children. His following her to her mother's home in Oregon unnerved her to the point that she contacted the police, and filed for a restraining order. Ultimately, complainant was unable to return to her home to live until almost three months later, when she felt that it was safe to return because Fulkerson was finally gone.

Moreover, Fulkerson's unauthorized coming and goings in complainant's apartment when she was not home were invasive and unsettling to complainant. The "gifts" he placed in her home, including a TV/VCR and pornographic video, the "Sex Tips and Tricks" book and items of lingerie, were unwanted, and she tried to return them. His numerous cards and letters devolved rapidly, as complainant firmly expressed her disinterest in Fulkerson, from declarations of love with honorable intentions, to explicit sexual references of things he



intended to do to complainant (such as “a passionate kiss”), to abusive sexual slurs (“sperm receptacle,” “female sexual deviant”). His verbal aggression and physical hostility included grabbing complainant by the arms, kissing her against her will, pushing her up against a garage wall and trying to choke her. Fulkerson’s conduct understandably frightened complainant, who sought to get away from him. Similarly, his threats to her were unnerving—that she had to “make the right choice” or suffer the consequences through either harm to her or to her children’s welfare.

Complainant’s wariness of Fulkerson was unabated at the time of hearing. Although complainant was still undergoing counseling, she continued to fear that Fulkerson would kidnap her daughters, or otherwise harm them or herself.

Considering the facts of this case in light of the factors set forth in Government Code section 12970, subdivision (c), respondent will be ordered to pay to complainant \$115,000 in damages for her emotional distress. Interest will accrue on this amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment. (*Dept. Fair Empl. & Hous. v. Merribrook Apartments* (1988) No. 88-19, FEHC Precedential Decs., 1988-1989, CEB 7, p. 22.)

#### B. Civil Penalty

The DFEH asks that the Commission award a civil penalty against respondent Fulkerson.

To vindicate the public interest, Government Code section 12987, subdivision (a)(3), authorizes the Commission to order a respondent to pay a civil penalty up to a maximum of \$10,000 for a first violation of the Act. (*River Meadow, supra*, 1998-1999, CEB 3, at p. 34.) Government Code section 12987, subdivision (a)(3), in setting out the test for civil penalties under FEHA, requires clear and convincing evidence of “oppression, fraud or malice, expressed or implied, as required by Civil Code section 3294.” “Malice” is defined to include conduct intended to cause injury or despicable conduct, which is undertaken with a “willful and conscious disregard” of a person’s rights. (Civ. Code § 3294, subd. (c).) “Oppression” is “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s rights.” (*Id.*)

In determining whether to award a civil penalty, the Commission considers evidence of the following: willful, intentional or purposeful conduct; refusal to prevent or eliminate discrimination; conscious disregard for fair housing rights; commission of unlawful conduct; intimidation or harassment; conduct without just cause or excuse, or multiple violations of the Act. (Gov. Code, § 12987, subd. (b).)<sup>3</sup>

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<sup>3</sup> Government Code section 12987, subdivision (a)(3), also mandates that the Commission take into account Government Code section 12955.6, which allows no fewer remedies than those provided by federal Fair Housing Rights Amendments Act and its implementing regulations (24 Code Fed. Regs., § 100.1, et seq.).

Fulkerson's conduct of sexually harassing complainant while he was the apartment manager at Tahoe Pines Apartments was shown, by clear and convincing evidence, to be willfully egregious, inexcusable, and oppressive conduct, within the meaning of Civil Code section 3294. (See also *River Meadow*, *supra*, 1998-1999, 1998 CEB 3, at p. 34; *Dept. Fair Empl. & Hous. v. Merribrook Apartments*, *supra*, 1988-89, CEB 7, at p. 22.) The perverse control Fulkerson sought to exert over complainant's life was oppressive and inexcusable. His usurpation of her life and peace of mind through his continuous unwanted sexualized attentions was a gross invasion of her rights to a discrimination-free housing environment. His imposition of his erotic fantasies on complainant was willful and egregious conduct. His repeated invasions of her apartment to advance his salacious goals of a sexual relationship with complainant were unlawful and willful breaches of his duty as a housing manager to provide a safe housing environment. This case warrants an award of the maximum civil penalty permitted by the FEHA.

Thus, this decision awards a civil penalty, payable by respondent to complainant, in the sum of \$10,000. This amount will be ordered payable by respondent to complainant, together with interest on this amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

### C. Affirmative Relief

The DFEH's accusation asks that respondent be ordered to: cease and desist from sexual harassment and to undergo training about sexual harassment prevention. The Act authorizes the Commission to order affirmative relief, including an order to cease and desist from any unlawful practice, and an order to take whatever other actions are necessary, in the Commission's judgment, to effectuate the purposes of the Act. (Gov. Code § 12970, subd. (a)(5).)

Respondent will be ordered to cease and desist from sexually harassing any tenants or applicants and from denying them their rights to a discrimination-free housing environment. In the event respondent again works as an apartment manager in California, he shall be ordered to undergo training about sexual harassment prevention, at his own expense.

## ORDER

1. Respondent Larry Mikol Fulkerson shall immediately cease and desist from sexually harassing any tenants or applicants and from denying their rights to a discrimination-free housing environment under the Fair Employment and Housing Act.

2. Within 60 days of the effective date of this decision, respondent Larry Mikol Fulkerson shall pay to complainant Gina Hartunian economic damages in the sum of \$800, together with interest thereon, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

3. Within 60 days of the effective date of this decision, respondent Larry Mikol Fulkerson shall pay to complainant Gina Hartunian compensatory damages for emotional distress in the sum of \$115,000, together with interest thereon, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

4. Within 60 days of the effective date of this decision, respondent Larry Mikol Fulkerson shall pay to complainant Gina Hartunian a civil penalty in the sum of \$10,000, together with interest on this amount, at the rate of ten percent per year, compounded annually, from the effective date of this decision until the date of payment.

5. Within 60 days of the effective date of this decision, if respondent Larry Mikol Fulkerson is or becomes employed as an apartment manager within the state of California, he shall undergo, at his own expense, training on sexual harassment prevention under the Fair Employment and Housing Act.

6. Within 100 days after the effective date of this decision, respondent Larry Mikol Fulkerson shall in writing notify the Department of Fair Employment and Housing and the Commission of the nature of his compliance with sections two through six of this Order.

7. Prior to receipt of payment, complainant Gina Hartunian shall comply with Government Code section 12987, subdivision (b), by waiving in writing any rights or claims she may have against Larry Mikol Fulkerson under Civil Code section 52 based on the events described in this decision.

Any party adversely affected by this decision may seek judicial review of the decision under Government Code sections 11523 and 12987.1, Code of Civil Procedure section 1094.5 and California Code of Regulations, title 2, section 7437. Any petition for judicial review and related papers should be timely served on the Department, Commission, respondent and complainant.

DATED: July 9, 2007

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CAROLINE L. HUNT  
Administrative Law Judge